

CANADA:

GREAT WHITE NORTH OR DIGITAL BLACK HOLE?

Remarks by John Kennedy
Chairman and Chief Executive, IFPI

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Good afternoon. My name is John Kennedy and I am the Chairman and Chief Executive of IFPI, the organisation that represents the recording industry worldwide.

I had the pleasure of speaking at CMW three years ago, and appreciate the opportunity to be here again today.

Much has changed in the music world over the past three years, both here, in the UK where I live, and just about everywhere. Far beyond the latest hits and hot artists.

Digital music has made tremendous advances all over the world since I was last here. At that time, IFPI had reported record company revenues from digital sales of about US\$1.1 billion globally in 2005. Digital sales comprised 6% of worldwide revenues, up from virtually zero two years before.

By 2008 – just three years later – international digital music sales had more than tripled to US\$3.8 billion and accounted for 21 per cent of recorded music sales. Of course, that is not the full story. We have become a digital-thinking business, but digital – for reasons I’m going to look at – has not yet put us on the path to overall market growth.

Despite our industry’s ongoing challenges, at the international level, I see a glass that is half full, not half empty. I think what can happen if, in a world where music piracy levels are now 95 per cent, we can migrate consumers to legal digital music offerings. The last few months have seen a myriad of new such offerings – from “access” services like Nokia’s Comes with Music to free-to-consumer advertising-supported services and telco-backed music stores which bundle music into an ISP subscription.

In many markets, we are seeing tremendous progress. In the US, for example, digital now commands 36 per cent of music sales. But in some other countries – notably, in Canada – the picture is decidedly less rosy. Here, in a

market that has traditionally been similar to the US, digital revenues amount to just 17 per cent.

Moreover, the growth of Canada's digital market is slowing markedly after more rapid advances in prior years. Digital track sales increased by 45 per cent in 2008. Not bad at all, except in comparison to growth of 65 per cent in 2007 and 94 per cent the year before.

While this trend is expected for a maturing market, what sets Canada apart from the US is that digital music sales here appear to be settling out at a much lower level.

Canada's underperformance is all the more out of step considering the strength of this country's digital foundation, with one of the highest broadband penetration rates in the world and one of the most digital-savvy populations anywhere.

So when it comes to digital music sales – and the overall music market here – foreigners like me are left wondering ... has the Great White North become a Digital Black Hole?

The reasons for this state of affairs are by now well-known: widespread file sharing continues to erode legitimate sales – both physical and digital. Peer-to-peer Internet services, other forms of digital swapping, and physical counterfeiting seem to have Canadians – more than consumers in other developed markets – firmly in their grip.

Weak copyright protection – particularly an outdated copyright regime – remains the major factor underlying the relative weakness of Canada's music market.

On that point – IP rights protection – there has been no progress here in the three years since I last spoke at CMW, excepting anti-camcording legislation.

I'm not in the habit of quoting myself, but please indulge me as I go back to my remarks of 2006, at this same conference. Then, I said:

Canada remains far behind virtually all its peers in the industrial world in respect of its efforts to bring copyright laws up to date with the realities of the global digital networked environment. ...

I added this: "If I were able to return to this stage in a year's time, I would like to be complimenting Canada on the following:

- On a new legislative environment in harmony with the rest of the world.
- On ISPs that cooperate in protecting copyright from piracy.
- On an Intellectual Property environment that encourages innovation and investment.

It turns out, regrettably and admittedly, that I engaged in wishful thinking. Three years later, my wish list remains unfulfilled. More than a decade after signing the WIPO Internet Treaties, Canada still lacks a modern, robust, digital-ready copyright regime.

For Canadian consumers, this means continued uncertainty about what kind of activities are acceptable on the Internet. In the absence of clarity, otherwise law-abiding Canadians have stepped into the legal void with uncharacteristic relish.

When I was last here, the OECD had reported that Canada has the highest rate of unauthorized file sharing in the world. There's no evidence this has changed. Faced with unprecedented competition from "free" music on the Internet, retail sales of music in Canada have declined by more than half since 1999.

But I am an optimist, and I think at the start of 2009 there is a change of mood happening both within our business and among those who help regulate our environment. For one thing, the wider world in which we live has changed dramatically in just a few months.

At this time of severe global recession, many other industries are now also experiencing sales declines. I don't wish it on them, but I do see certain side effects – for example, I see a climate where **COMMON SENSE** has for the first time in a long time become good solid currency.

Think about the causes of the financial crisis - banks giving mortgages far greater than the value of a property based on a ridiculous multiple of the buyer's earning capacity. That defied common sense and we're all paying the price for it. Perhaps now a little more reasonable thinking is happening.

In today's music industry, common sense offers the prospect of relief. For years, we were criticized for suggesting that music should be paid for, for not thinking outside the box, for not being inventive enough. We were told to embrace free not to resist it, even after we were innovating and investing in a myriad of new digital models, from a la carte to advertising funded.

But at the end of the day common sense provides a reality check: it's difficult to get people to pay for music if getting it for free is an option. That's not rocket science.

Somehow, we have to solve the problem of free – that too is just common sense. And, let me clarify, here I don't mean free in the sense of music that is free-to-the-consumer through new business models based on access payments, music bundled into other services or supported by advertising. By "free music" I mean music that is unpaid for – for which artists and creators get no compensation. Music, in short, that is stolen.

If "free music" online is a problem worldwide, it's a problem in Canada more than just about anywhere else.

Consider the digital music services available here. Or rather, the lack of them. Given that so many Canadians use the Internet to obtain and enjoy music, your sizeable market and inherent digital strengths, you'd think that digital music providers would be flocking to this country as they have elsewhere. But beyond iTunes, Puretracks and a handful of others, consumers are very limited in their choices here.

Amazingly, last year – when a flurry of innovative new digital offerings were introduced in Europe, the US and Asia – Canada saw not one new major service. Why is this so? It comes down, above all, to IP protection. Canada lacks the marketplace integrity online businesses need to be confident they can earn a return on their investment.

Common sense leads us to a solution: restore marketplace integrity with a modern copyright law. With that, Canada could become a leader – instead of a follower, as at present – in digital innovation.

I'm not advocating for Canada anything different than what has been implemented successfully in other markets. WIPO-compliant copyright laws have long been in place across the European Union, in Australia, New Zealand, the US, and in many other places.

Occasionally, from across the Atlantic, I catch wind of the copyright debate that seems to stir up so much angst in this country. To be honest, it's mystifying.

When Bill C-61, Parliament's last attempt at legislative reforms, was introduced, I read that one of your most oft-quoted copyright commentators, Michael Geist, said that it -- and I quote:

(E)viscerates user rights in the digital environment

(E)rects new barriers for teachers, students, and schools at every level...

(W)ill render it virtually impossible to protect against the invasion of privacy by digital media companies.

(M)eans that consumers no longer control their own personal property.

According to him, the legislation was a – quote – “kick in the gut to Canadians everywhere.”

And you thought global warming was a threat?

Feel free to take the following observations on Mr. Geist’s concerns with a grain of salt, as I freely admit my perspective may be coloured by long involvement in the music industry. But across Europe I’ve yet to notice WIPO-compliant copyright laws causing eviscerated user rights, teachers who can’t teach, students who can’t learn, privacy invasions, or consumers who have lost control of their personal property. And I’ve double-checked.

Believe it or not, where I live, the sky has not fallen.

When people start believing such arguments – as preposterous as they may be – legal reforms needed to promote innovation are discouraged. The result: Canadian copyright law remains stuck in an analogue time warp.

As important as it is, copyright reform is not the only element needed to create a legitimate and robust online marketplace. Even in countries with WIPO-compliant laws, the creative industries still face difficult challenges, though generally not to the same extent as Canada. Over the past few years, one of these challenges has come to the forefront: getting ISPs to take some measure of responsibility to help control the massive infringement of copyright over their networks.

It's a fact that at least 80 per cent of the traffic flowing through the Internet is infringing content – movies, software, games, written materials and, of course, music. All of it is swapped with not a cent of compensation to artists, creators and rights holders. The Internet, in effect, has become a thriving black market for stolen goods.

Today, there is growing recognition by all parties involved – not just creators and the content industries, but also ISPs and governments – that this cannot continue. Solutions to this problem have been implemented or are in development in several countries. Once again, as with copyright reform, events elsewhere have overtaken Canada.

In my own country, the UK, a government-backed agreement was struck last July between the movie and music industries and ISPs that will help greatly in the fight against online piracy. In Ireland, the ISP Eircom has agreed to introduce a three-steps system that would ultimately cut off users who share copyrighted material..

In France, the government-brokered Olivennes Agreement recommended a similar graduated response system. Legislation to enforce the agreement has been passed by the senate and is now before the national assembly.

Each of these countries has taken a unique approach. But most of them have one key thing in common: ISPs, the content industries and governments are sitting down at the same table, and working together to come up with workable and effective solutions. I can't think of any reason why the same parties couldn't work together in this country to develop a unique, made in Canada solution.

The divisions may be narrower than you think. Serge Sasseville, an executive at Internet provider Quebecor Media, has already declared his company's readiness to come to the table. Speaking at the Canadian Telecommunications Forum last November, he said:

A Canadian telecommunications company ... cannot remain insensitive to the piracy problems affecting the survival of Canadian content producers and rights holders. ISPs should engage in discussions with them, as partners, in order to find and agree on solutions that would allow these content producers and rights holders to be successful in the new media environment.

He continues:

(O)ne thing is for sure: the confrontation between the ISPs and the content producers and rights holders must stop. They have to build together a strong business model that will protect and help develop the Canadian cultural production.

I urge all of you to build on this spirit of cooperation. If Mr. Sasseville's views are any indication, Canadian ISPs will indeed be central to the solution to Internet piracy.

As for copyright reform, it's simply a matter of Canada catching up to the rest of the world on a well-worn path. Here, there is a glimmer of hope: the Conservative government promised in its November Throne Speech to "modernize Canada's copyright laws and ensure stronger protection for intellectual property."

I truly hope that when I next return to Canada – hopefully sooner than three years this time – your government will have long since enacted copyright reforms. Rest assured that, as in Europe today, not only will the sky remain safely in place above you, but you will see an outpouring of innovation and exciting new ways to enjoy digital music.

Consumers will benefit. Artists will win. Canada's vibrant music scene will be all the stronger for it. If nothing else, it will be a victory for common sense.

Thank you.